

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2762 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATEL MULCHANDBHAI KHUSHALBHAILUTIA

Versus

DEPUTY COLLECTOR

Appearance:

MS KUSUM M SHAH for Petitioners

YOGESH F. MEHTA, AGP FOR RESPONDENT NOS.1 AND 4.

MR AVINASH K MANKAD for Respondent No. 2 & 3,

CORAM : MR.JUSTICE C.K.THAKKER

Date of decision: 26/07/96

ORAL JUDGEMENT

This petition is filed against an order passed by the Deputy Collector, Palanpur, respondent no.1 in Fragment Case No.2/84 on August 31, 1984 and confirmed by the Secretary, Revenue Department, respondent no.4 herein on December 15, 1984.

It is the case of the petitioners that by a registered sale deed dt. August 3, 1961, the petitioner nos. 2, 5, 6 and 10 and fathers of petitioner no.1, 3, 7, 8, 9, 11 and 12 purchased land bearing part of survey no.3 admeasuring 31,500 sq.feet (0-28 Gunthas) of village Kumbhasan, Taluka Palanpur. It is, their case that original owners of the said land were Kanbi Karsan Manji Toti and others. It is asserted by the petitioners and they were put in possession after the land was purchased by them in 1961 and they were cultivating the land. It is also stated by them that after they purchased land petitioner no.2,3,4,6 and 10 have constructed residential houses and they were residing in those houses. Some proceedings were initiated on report of the Prant Officer in December 1970 presumably alleging that without obtaining N.A. permission construction was made and it is the case of the petitioner that the said construction was regularised by the District Development Officer on payment of fine as also composition fees.

It appears that an application was made on behalf of the respondent nos.2 and 3 on June 10, 1983 that since it was a fragment land it could not have been sold by them to the petitioners and hence proceedings under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as "the Act") were required to be initiated and that since the sale was contrary to law the possession of the land ought to have been restored to them. It appears that in pursuance to the said application notice was issued by the Deputy Collector on May 10, 1984 and the petitioners were ordered to appear and to show cause why order should not be passed under the Act.

After hearing the parties, the Deputy Collector held that the provisions of the Act were applicable there was no evidence regarding grant of n.a. permission and hence it could not be said that legal construction was made and if there was no legal construction, the nature of the land which was agricultural in the year 1961 could not be said to have changed. Since the sale was in contravention of the provisions of the Act, the petitioners were not entitled to retain possession. Accordingly, the Deputy Collector held that there was violation of the provisions of law and hence amount of Rs.50/- was fined and the status quo ante was ordered.

Being aggrieved by the said order, the petitioners preferred revision application, which also came to be dismissed.

Ms. Shah, learned counsel for the petitioner raised various contentions. She submitted that the authorities have committed error of law in holding that the provisions of the Act were applicable. In fact, they were not applicable in view of the fact that nature of the land did not remain to be agricultural as construction was already made. She also submitted that as asserted by the petitioners after construction was made, the proceedings were initiated and the construction was regularised and amount of fine as well as composition charges have already been paid.

In the alternative, Ms. Shah submitted that even if it is assumed for the sake of argument that the land was agricultural land then also provisions of the Act could not apply. She submitted that the land in question was sold by respondent nos.2 and 3 by registered deed in the year 1961 and entry was made in village form on September 16, 1973 and it was certified by the Dy.Mamlatdar on 18.10.1973. Placing reliance on the entry, she submitted that since the provisions of the Act could be attracted if it comes within 20 gunthas. In the instant case, since it was 28 gunthas, the provisions were not applicable.

Finally, Ms. Shah submitted that even if that argument is negatived there is gross and unexplained delay on the part of the authorities in initiating the proceedings under the Act. She submitted that the sale was registered in 1961 and the petitioners were put in possession of the land. For the first time, the notice came to be issued by the Competent Authority in May 1984 that is after more than two decades and that too after application was made on behalf of respondent nos.2 and 3. Before that not only entry was made in the revenue records but was certified. In these circumstances also the order requires interference.

Mr.Mehta, learned Assistant Government Pleader on the other hand supported the order passed by the authority. Mr.A.K.Mankad, learned counsel for the respondent nos.2 and 3 also supported the arguments of Ms. Mehta. Both of them submitted that when the authorities under the Act have taken a view holding that the provisions of the Act were applicable and the order passed in exercise of the powers under Art.226 and/or 227 of the Constitution of India, this court may not interfere.

In my opinion, the petition requires to be allowed for more than one ground. Firstly, looking to

the records, it clearly appears that the construction was made after 1961 after the land was purchased by the petitioner. It is asserted which is not controverted that when proceedings were initiated against the petitioner, Deputy Mamlatdar has granted permission for N.A. use and that the construction which was made by the petitioners came to be regularised. Again an amount of Rs.50/- buy way of fine was imposed on the petitioner and that composition charges were also collected. In these circumstances, provisions of the Act could not apply to the lands in question.

But even if it is assumed that the provisions of the Act were to be applied and that though the land is more than 20 gunthas and yet they can be pressed in service, in my opinion, Ms. Shah is right in contending that there is gross delay on the part of the respondent authorities in initiating the provisions under the Act. The transaction was of sale. It was a registered sale. The sale deed was registered in 1961. An entry was made in the revenue records and it was certified by the Competent Authority in 1973. In spite of that no proceedings were taken by the authority. It was only after an application was made by original owners in June 1983, that the notice came to be issued in August 1984. It is no doubt true that there is no period of limitation for taking any action but it is well settled that when no period of limitation is prescribed, the proceedings are required to be taken within reasonable period.

In the instant case, in my opinion, by no stretch of imagination it can be said that the proceedings were initiated within reasonable period. Hence, on that ground also the petition requires to be allowed. Accordingly, petition is allowed. Rule is made absolute. The order passed by the Deputy Collector dt. 31.8.1984, Annexure.D and confirmed by the Secretary (Appeals) dt. 15.12.1984 Annexure.E to the petition is quashed and set aside the rule is made absolute with no order as to costs.

Dt. 26.7.1996.

(C.K.THAKKER J.)
